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Bail Slip

The Sole Appellant in CA.No.43/1999 herein namely Rajendiran (Accused in SC.No.20/98 on the file of the II Additional District SJ cum CJM Krishnagiri) was directed to be released on bail as per the order of this Court dated 1.2.2002 and made in Crl.M.P.No.24 of 2002.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR

and

THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 43 of 1999

Rajendiran ... Appellant/ Accused

-vs-

State, Inspector of Police,
Dharmapuri Town Police
Station, Dharmapuri.
(Cr.No.734 of 1996) .. Respondent/ Complainant

Prayer: Appeal U/s 374 of Crl.Pc against the judgment passed by the learned II Additional District and Sessions Judge cum Chief Judicial Magistrate, Dharmapuri District at Krishnagiri, in S.C.No.20 of 1998 dated 24.12.1998.

* * * * *

For Appellant : Mr.S.Doraisamy

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor

* * * * *

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J U D G M E N T

(Judgment of the Court was delivered by M.CHOCKALINGAM, J)

The sole accused in a case of murder, who was found guilty as per the charge and awarded life imprisonment by the Court of Sessions, Krishnagiri in Sessions Case No.20 of 1998, has brought forth this appeal challenging the said conviction and sentence.

2. Short facts necessary for the disposal of this appeal can be stated thus:

(a) The deceased Dhanalakshmi was the daughter of P.W.5. She was given in marriage to the appellant/accused. Both of them were living in Weavers' Colony. P.Ws.2 and 3 were living nearby. On the date of occurrence, viz., 12.8.96, at about 1.30 a.m., P.Ws.2 and 3, when they were sleeping, heard the distressing cries of the deceased. They came out to witness the deceased Dhanalakshmi coming out with burning injuries throughout the body. At that time, they found the appellant/accused coming outside and running away. P.Ws.2 and 3 tried their best to quench the fire and they immediately inform P.W.5. P.W.5 took Dhanalakshmi with the burn injuries to Government Hospital, Dharmapuri. P.W.7, the doctor who was on duty, at about 2.00 a.m. examined her and gave first aid. He enquired her about the incident and recorded the same as well as the injuries he found on her in Ex.P.4, a copy of the accident register. The doctor informed the police. P.W.6, the Judicial Magistrate No.1, Dharmapuri, was informed for recording the dying declaration of the said Dhanalakshmi. Accordingly, P.W.6 rushed to the hospital and in the presence of P.W.11, doctor, he recorded the dying declaration between 4.00 a.m. and 5.00 a.m. The doctor, P.W.11, has also certified that she was conscious enough to give such a statement. The proceedings of the learned Magistrate regarding the dying declaration so recorded is marked as Ex.P.3.

(b) On receipt of the intimation from the hospital authorities, P.W.15, the head constable attached to Dharmapuri Police Station, went and recorded the statement given by the deceased Dhanalakshmi at about 5.00 a.m. The said statement is marked as Ex.P.12. He handed over the intimation as well as the statement, Ex.P.12, given by the deceased Dhanalakshmi, to P.W.16, the Sub-Inspector of Police, at 6.00 a.m. P.W.16, on the strength of Ex.P.12, registered a case in Crime No.734 of 1996 under Section 307 I.P.C. The printed F.I.R., Ex.P.13, was despatched to the Court. On the same day, at about 10.00 a.m., he received an

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intimation from the hospital that Dhanalakshmi died, pursuant to which, the case was converted to one under Section 302 I.P.C. and the express F.I.R., Ex.P.14, was despatched to the Court. Investigation was taken up by P.W.17, the Inspector of Police.

(c) P.W.17, on receipt of a copy of the printed F.I.R., proceeded to the hospital, conducted an inquest on the dead body and prepared Ex.P.16, inquest report. Then, he proceeded to the place of occurrence, made an inspection of the scene of occurrence and in the presence of two witnesses, prepared Ex.P.1, mahazar and Ex.P.15, sketch. Following the same, a requisition was forwarded to the hospital for the purpose of autopsy on the body of Dhanalakshmi.

(d) On receipt of the requisition, P.W.9, the Assistant Surgeon attached to Government Hospital, Dharmapuri, conducted autopsy on the dead body of Dhanalakshmi and he found the following:-

> " There is extensive burns with whole thickness of the skin involving entire body except over front of right lower thigh and dorsum of both feet. Singeing of scalp hairs and eye brows present."

The doctor, P.W.9, has issued the post-mortem certificate under Ex.P.8, wherein he has opined that due to extensive burns, Dhanalakshmi died and death would have occurred about 4 to 8 hours prior to autopsy.

(e) During investigation, on 15.8.96, P.W.17 arrested the appellant/accused and seized the medical slip, which was issued by the doctor, who treated him for his injuries, under Form 95. He sent the appellant to the hospital for treatment. P.W.12, the doctor, treated the appellant for the injuries found on his person and issued Ex.P.11, a copy of the accident register. As the appellant was treated as out-patient, P.W.17 sent him for judicial remand. He examined other witnesses and recorded their statements. On completion of the investigation, the final report was filed against the appellant/accused. The case was committed to Court of Sessions and necessary charges were framed.

3. In order to substantiate the charges levelled against the appellant/accused, the prosecution relied on 17 witnesses and marked 16 exhibits and 8 material objects. On completion of the evidence on the side of the prosecution, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused denied them as false. He examined a witness, one Dr.Shankar attached to Government

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Hospital, Dharmapuri, as D.W.1. The trial Court, heard the arguments advanced by both sides and made a scrutiny of the materials available and ultimately, found the appellant/accused guilty as per the charge and awarded the imprisonment referred to above, which is the subject matter of challenge in this appeal.

4. Mr.S.Doraisamy, the learned counsel appearing for the appellant, inter alia, in his sincere attempt in assailing the judgment of the trial Court, made the following submissions:-

The lower Court has failed to note that at the time of the incident, the appellant was inside the house and the door was locked outside and that the deceased set fire over herself near the bathroom, which was outside the house and it was P.W.2, who came and opened the door of the house and thereafter, both the appellant and P.W.2 went inside the bathroom and tried to put off the fire. When the deceased was admitted in the hospital, she was found to sustain 80% burn injuries. Under such circumstances, it will be highly impossible for her to make a narration of events to the Judicial Magistrate as one brought forth. The lower Court has placed much reliance on the dying declaration alleged to have been given to the Judicial Magistrate, but it has not been recorded in accordance with law and hence, no importance could be attached to the same. The lower Court has also failed to consider the earliest statement made by the deceased to P.W.7, which is found written in the accident register copy, Ex.P.4, by the doctor that she was conscious and it was her self act that she poured kerosene and made an attempt to immolate herself. Under such circumstances, such a dying declaration, which came into existence subsequently, should have been nothing but due to tutoring by someone else. Apart from that, the Judicial Magistrate has obtained the thumb impression from the deceased after recording the dying declaration, but there is no recording as to her mental frame. The evidence of D.W.1 would make it clear that the deceased was suffering from fits and was taking treatment at Bangalore and that those who are suffering from fits, may get mental depression, which may led to commit suicide. Under such circumstances, P.W.1, on being aggrieved by the death of her daughter, has made up a case as one that she was murdered by the appellant, but that is not so and the lower Court, without proper perspective of the evidence adduced, has found the appellant/accused guilty, which, for the reasons stated above, has got to be set aside.

5. We have heard the learned Additional Public Prosecutor on the above contentions.

6. The Court paid its full attention on the submissions made and had a thorough scrutiny of the available materials.

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7. Admittedly, the wife of the appellant, Dhanalakshmi was admitted by P.W.7 in the hospital with burning injuries at about 2.00 a.m. on 12.8.96 and following the same, she died at 10 O'clock. Originally, a case under Section 307 I.P.C. was registered and subsequently, on her death, it was converted to one under Section 302 I.P.C. and following the inquest, a requisition was forwarded to the hospital and P.W.9, the doctor attached to Government Hospital, Dharmapuri, has conducted autopsy and has given the post-mortem certificate under Ex.P.8, wherein he has opined that Dhanalakshmi died due to extensive burns and thus, there is ample evidence pointing to the fact that Dhanalakshmi died out of the burn injuries. Apart from that, the fact that she died out of the burn injuries was never questioned by the appellant/accused either before the trial Court or before this Court and hence, the fact could be so and it could be concluded so.

8. What was all contended by the appellant/accused before the trial Court and equally here also is that it was her self act that she has attempted to commit suicide and he never acted so. In the instant case, all the circumstances are pointing to the guilt of the appellant/accused and the defence put forth by the appellant/accused has been rightly rejected by the trial Court. The learned counsel for the appellant/accused has very much relied upon Ex.P.4 by stating that it is a copy of the accident register issued by the doctor, P.W.7, wherein it has been recorded that the deceased was conscious and a statement was given to the effect that she poured kerosene and set fire to herself. This would be pointing to her act and certainly not to the guilt of the accused. It is true, it is so stated in Ex.P.4. But the Court has to reject the statement in view of all the other circumstances available. At the time when she was admitted in the hospital, it would have been passing in her mind that it would not cause her death and that she would have escaped. Under such circumstances, she was not ready and prepared to implicate her husband in a serious case like this. But, when a Judicial Magistrate was called for for recording the dying declaration, she has narrated the entire incident and P.W.6, the Judicial Magistrate, has recorded the same after following the procedural formalities. A perusal of the dying declaration, Ex.P.3, would clearly reveal under what circumstances the appellant/accused acted and it was he, who poured kerosene and set fire on her body. Added further, was the statement of the deceased to the head constable, P.W.15, who, on receipt of the intimation, proceeded to the ward and recorded the statement given by the deceased, which is marked as Ex.P.12 and on the strength of which, a case came to be registered by P.W.16, the Sub-Inspector of Police. In the said statement, Ex.P.12, also she has narrated the entire incident implicating the appellant/accused in the crime. Under such

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circumstances, as rightly pointed by the trial Court, much importance need not be attached to the statement recorded under Ex.P.4.

9. Apart from the above, the next contention put forth by the learned counsel for the appellant is that the deceased was suffering from fits and that she had mental depression, on account of which, she could have committed suicide and that in order to substantiate the said fact, D.W.1, Dr.Shankar, was examined. The said contention, in our view, requires only rejection. According to D.W.1, she was suffering from fits and therefore, she had a treatment in Bangalore. But it is pertinent to point out that D.W.1 was a doctor from Government Hospital, Dharmapuri and no materials are placed in the hands of the Court to accept the contention that she had any treatment in Bangalore. Apart from that, when there is a dying declaration recorded by the Judicial Magistrate, which, in the opinion of the Court, would be suffice to find the appellant/accused guilty and sustain a conviction, all other materials become irrelevant.

10. The learned counsel, at last, made a feeble attempt by contending that there was a quarrel between the spouses that day, as a result of which, she has done so, even assuming all the facts of the prosecution case are proved and thus, it would not fall within the ambit of murder, which also, in the opinion of the Court, has got to be rejected. As could be seen from the available materials, it was the appellant/accused, who was having a mistress and it was his own making and he was quarrelling with his wife and that had happened not immediately preceding the occurrence, but at the late hours of the previous day. One strong circumstance, which stood against the appellant/accused was that on the date of occurrence, i.e., on 12.8.96 at about noon, he appeared before P.W.10, a private doctor and informed him that while he was working in his shop, the burning oil fell, due to which he sustained the injuries. This would clearly indicate that it was the false statement made in order to escape from the clutches of law. But, subsequently, when he was produced before P.W.12, the doctor attached to Government Hospital, Dharmapuri, he has informed him that his wife, after pouring kerosene over her, set fire to herself and that he made sincere attempts to save her and when he went to the rescue, he sustained the injuries. This would clearly reveal that when he was arrested and produced before the doctor, he made up his mind to put forth that it was she, who attempted to end her life. Thus, the above two different versions given by the appellant would clearly indicate that it was the act of the accused and not otherwise.

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11. In the instant case, the prosecution had not only relied on the circumstantial evidence, but also on the documents, which came into existence at the instance of the deceased, which are two in number, one is the dying declaration, Ex.P.3 and the other is the statement to the police, Ex.P.12, on the strength of which, a case under Section 307 I.P.C. came to be registered. In the considered opinion of the Court, the prosecution had put forth sufficient and acceptable evidence to sustain a conviction. All the contentions put forth by the learned counsel for the appellant do not carry merits and they are to be rejected and the trial Court was perfectly right in finding the appellant guilty as per the charge under Section 302 I.P.C. and awarding the punishment and nothing remains to be interfered with. The appeal fails and the same is dismissed. It is reported that the appellant/accused is on bail. He shall surrender the bail bonds and the learned Sessions Judge shall also take steps to commit him to jail to undergo the remaining period of sentence.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The II Additional District
and Sessions Judge cum CJM.,
Dharmapuri at Krishnagiri.

2.-do- Thro' The Principal
Sessions Judge,
Dharmapuri at Krishnagiri.

3. The Judicial Magistrate No.I, Dharmapuri.

4. -do- Thro' The Chief Judicial Magistrate,
Dharmapuri at Krishnagiri.

5.The District Collector,
Dharmapuri.

6.The Director General of Police,
Chennai.

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7.The Superintendent, Central Prison,
Vellore.

8.The Inspector of Police, Dharmapuri
Town police station, Dharmapuri.

9.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.S.Doraisamy, Advocate SR 27893

TEJ(CO)
SR/11.7.2005

Crl.A.No.43 of 1999

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